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OFFICE OF THE CHAIRMAN

2000 DEC -5 A 11: 24

December 2, 2000

2266.072

by hand

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: CONVERSION OF LPTV STATIONS TO CLASS A STATUS

Dear Ms. Salas:

On behalf of John W. Smith, Jr., Licensee of LPTV station W05BE, and the law firm of Hardy, Carey & Chautin, L.L.P. and certain of its clients, I forward herewith an original and fourteen copies of an **EMERGENCY PETITION FOR EXTENSION OF TIME TO FILE CLASS A TELEVISION LICENSE APPLICATIONS AND FOR EXTENSION OF EXISTING LPTV PERMITS.**

To prevent possible loss of service from existing Class A eligible LPTV stations, it is requested that this Emergency Petition be acted on prior to December 6, 2000. We respectfully submit that favorable action on the attached Emergency Petition will substantially further the public interest and preserve the *status quo*. Further, no party will be prejudiced by grant of this Emergency Petition.

As always, please feel free to call me with any questions you might have.


Sincerely yours,


Bradford D. Carey

cc: Each Commissioner
Chief, Mass Media Bureau
Chief, LPTV Branch

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Before the
Federal Communications Commission
Washington, D.C.

In re:)
)
Establishment of a) MM Docket 00-10
Class A Television Service)

To: Chief, Low Power Television Branch

EMERGENCY PETITION
FOR EXTENSION OF TIME TO FILE CLASS A TELEVISION
LICENSE APPLICATIONS
AND FOR EXTENSION OF EXISTING LPTV PERMITS

The law firm of Hardy, Carey & Cautin, L.L.P. on behalf of itself and certain of its clients, including John W. Smith, Jr., (collectively "HC&C") hereby seeks relief from the existing deadline for the filing of applications for Class A Television Licenses. In support whereof, the following is shown¹.

I. BACKGROUND.

In its Report and Order in Establishment of a Class A Television Station, MM Docket 00-10, 15 FCC Rcd, 6322 (2000), (the "R&O") the Commission established the terms under which the licensees of qualified Low Power Television Stations ("LPTV") could seek to obtain licenses for their qualifying stations. By Erratum, released May 19, 2000, the Commission clarified certain matters and stated that the effective date (due to publication in the Federal Register) was June 9, 2000.

¹Hardy, Carey & Chautin, L.L.P. is a law firm engaged in the regular practice of law before the Commission. Its clients include numerous permittees and licensees of LPTV stations, including some which are unable to file for Class A authorizations due to the circumstances set forth herein. Other clients of the firm have permits that will expire before applications for modifications of facilities may be filed. Thus, Hardy, Carey & Chautin, L.L.P. and its clients have standing to file this Emergency Petition.

Technical interference rules were established for Class A stations. To seek a Class A license or construction permit, the R&O required that the licensee certify that certain interference standards are met by the facilities to be Class A authorized.

Recognizing that without relief from their current technical situations, the licensees of some of the existing LPTV stations that are otherwise Class A eligible would not be able to make the required non-interference certifications, the R&O *inter alia* established new rules for the filing of minor change applications for Class A qualified stations. The effective date of the new minor change rules was set at October 1, 2000. Thus, there would be sufficient time for the licensee of an otherwise Class A qualified LPTV station to file an application for a construction permit specifying facilities that meet the technical standards for Class A certification and utilize that construction permit application as the vehicle by which the Class A status of the station would be preserved.

LPTV station W05BE is licensed to John W. Smith, Jr. Mr. Smith timely filed all required documents to establish the station as a Class A eligible and the Commission listed the station as one for which the certification had been accepted. Due to matters beyond Mr. Smith's control,² several years ago, it was necessary to vacate the site specified in the station's license. A request for a special temporary authorization to permit continued operation from a nearby site was filed and granted by the LPTV Branch, effective January 7, 1997. The STA has been renewed and is in effect presently. Mr. Smith has committed to file an application for a construction permit to specify the facilities operated under the

²The licensee previously was Celebration Ministries, Inc., of which Mr. Smith was a principal.

STA at the earliest opportunity. Deferral of the effective date of the new minor change rule until after the deadline for the filing of Class A applications has the quite undesirable consequence of blocking Mr. Smith from filing a Class A application before the deadline.³

II. THE COMMISSION DEFERRED THE FILING OF MINOR CHANGE APPLICATIONS UNDER THE NEW RULE.

On September 25, 2000, the Commission's staff under delegated authority deferred the effective date of the new minor change rules for Class A eligible stations until January 15, 2001. *See* DA-00-2190.

III. IT IS NOT PRESENTLY POSSIBLE FOR SOME CLASS A ELIGIBLES TO FILE CLASS A APPLICATIONS DUE TO DELAY IN IMPLEMENTATION OF THE NEW MINOR CHANGE RULES.

An unexpected side-effect of deferring the effective date of the new Class A minor change rules is that licensees of stations that are Class A eligible, except for the need to file an application for minor modification of facilities, are prohibited from filing that necessary application and risk forfeiture of the Class A status of their stations.

IV. PETITIONS FOR RECONSIDERATION REMAIN PENDING.

As set forth in DA 00-2190 which deferred the effective date of the new Class A minor change rule, there are petitions for reconsideration of the R&O pending. Thus, those licensees (and permittees) of Class A eligible stations that could make the necessary filings before the deadline must risk their entire investment in their LPTV facilities (which are often backed by the personal guarantees of the licensee and its investors) without knowing what

³Mr. Smith could not make the required certifications presently, according to informal advice from the Commission's staff, because the station is not operating from its licensed site.

the final rules will be. HC&C does not believe that either Congress, in adopting the Community Broadcasting Protection Act, or the Commission intended this result.

V. THE DEADLINE FOR THE FILING OF CLASS A APPLICATIONS SHOULD BE EXTENDED UNTIL MARCH 1, 2000 OR 60 DAYS AFTER THE REPORT AND ORDER IS NO LONGER SUBJECT TO RECONSIDERATION, REVIEW OR APPEALS TO THE COURTS, WHICH EVER LATER, AND ALL OUTSTANDING CONSTRUCTION PERMITS SHOULD BE EXTENDED FOR SIX MONTHS AFTER THE SAME DATE.

When it adopted the R&O, the Commission envisioned that licensees of qualified LPTV stations have adequate time to plan their filings and file applications under the new minor change rules prior to the deadline for the filing of applications seeking Class A authorizations. LPTV licensees have been denied the procedural opportunities, which the Commission promised them in the R&O. Grant of the requested extension of time in which to file for Class A authorizations will eliminate this unexpected and unintended situation.

VI. EXISTING PERMITS MUST BE EXTENDED.

Many licensee and permittees have obtained construction permits to relocate their transmitter or migrate to another channel due to loss of transmitter sites, displacement by DTV or NTSC TV stations and other reasons. In view of the uncertainty attendant with the pending petitions for reconsideration, many LPTV licensees are not certain whether they should construct as presently permitted or seek modification of their permits. Moreover, in some cases what once appeared to be the most advantageous facilities would be undesirable now.

By its *Report and Order* in Streamlining of Mass Media Applications, MM Docket 98-43, 13 FCC Rcd 23056, the Commission modified its prior policies governing extension

of construction permits. A three year construction period was established for most Mass Media facilities. Then outstanding permits were extended until the later of a three year period or December 21, 2000. In view of the inability of LPTV licensees and permittees to file applications for modification of their facilities, the Commission should extend all permits that were outstanding on September 25, 2000 until six months after the later of the date on which Class A eligible licensees (or permittees) may file construction permit applications under the new minor change rule or when the Report and Order is no longer subject to appeal.

VII CONCLUSION: THE CLASS A DEADLINE AND EXISTING PERMITS SHOULD BE EXTENDED.

In view of the foregoing, it is respectfully urged that this Emergency Petition be granted and that the deadline for the filing of Class A authorization applications be extended as requested and that existing LPTV permits be extended (or "tolled") automatically until at least six months after the petitions for reconsideration and other appeals have been resolved.

Grant of this Emergency Petition will substantially further the public interest. The intent of Congress in establishing the Class A Television service will be furthered. Existing stations that have qualified as Class A facilities (but for technical certification matters) will be given the opportunity to become Class A authorized as Congress and the Commission intended. The likelihood of continuation of existing services, with substantial local programming, which the public has come to depend on will be enhanced. On the other hand, were the relief sought in this Emergency Petition not granted, existing services, on which the public depends, might be ultimately forced off the air because the licensees were prevented

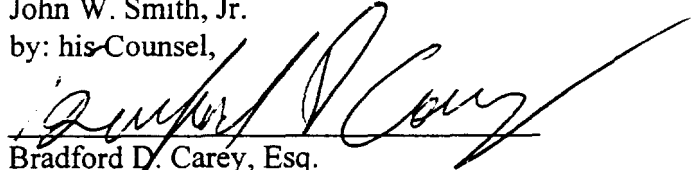
from filing necessary applications or permits expired while the effectiveness of the Commission's rule that would permit modification of them was deferred.

No party will be prejudiced by grant of the relief sought herein.

In view of the foregoing, it is respectfully urged that this Emergency Petition be granted and the relief set forth above granted.

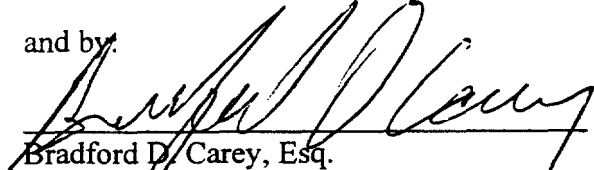
Respectfully Submitted:

John W. Smith, Jr.
by: his Counsel,



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and by:



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dated: December 2, 2000

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